SCANNED

112 pages

MONTANA LEGISLATIVE HISTORY

Chapter 7 ~~19~~ 2001

Bill H 25 S _____ Original bill & history X C

H. Committee on State Admin			S. Committee on Judiciary		
Hearing Date(s)	1-8	✓ C	Hearing Date(s)	1-23	✓ C
NO summaries	1-9	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	02/09/2001			
(H) Signed by Governor	02/09/2001			
(H) Transmitted to Governor	01/30/2001			
(S) Signed by President	01/30/2001			
(H) Signed by Speaker	01/29/2001			
(H) Returned from Enrolling	01/26/2001			
(H) Sent to Enrolling	01/26/2001			
(S) Returned to House	01/25/2001			
(S) 3rd Reading Concurred	01/25/2001	50	0	
(S) Scheduled for 3rd Reading	01/25/2001			
(S) 2nd Reading Concurred on Voice Vote	01/24/2001	50	0	
(S) Scheduled for 2nd Reading	01/24/2001			
(S) Committee Report--Bill Concurred	01/23/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred	01/23/2001	8	0	(S) Judiciary
(S) Hearing	01/23/2001			(S) Judiciary
(S) Referred to Committee	01/15/2001			(S) Judiciary
(S) First Reading	01/15/2001			
(H) Transmitted to Senate	01/13/2001			
(H) 3rd Reading Passed	01/13/2001	98	0	
(H) 2nd Reading Passed	01/12/2001	99	0	
(H) Scheduled for 2nd Reading	01/12/2001			
(H) Committee Report--Bill Passed	01/11/2001			(H) State Administration
(H) Committee Executive Action--Bill Passed	01/11/2001	18	0	(H) State Administration
(H) Hearing	01/08/2001			(H) State Administration
(H) First Reading	01/03/2001			
(H) Referred to Committee	12/26/2000			(H) State Administration
(C) Introduced Bill Text Available Electronically	11/27/2000			
(H) Introduced	11/27/2000			
(C) Pre-Introduction Letter Sent	11/16/2000			
(C) Draft in Assembly/Executive Director Review	11/15/2000			
(C) Draft in Final Drafter Review	11/14/2000			

(C) Bill Draft Text Available Electronically	11/13/2000			
(C) Draft in Input/Proofing	11/13/2000			
(C) Draft in Edit	11/13/2000			
(C) Draft in Legal Review	11/13/2000			
(C) Draft Back for Redo	11/13/2000			
(C) Draft in Legal Review	11/10/2000			
(C) Draft to Requester for Review	09/29/2000			
(C) Draft Request Received	09/18/2000			

HOUSE BILL NO. 25

INTRODUCED BY P. SLITER

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 1-1-517, 2-7-501, 2-15-3316, 7-1-2111, 7-4-2503, 7-7-2101, 7-7-2203, 7-14-2524, 7-16-2327, 7-21-2303, 10-2-102, 13-2-301, 13-12-207, 13-15-401, 15-1-501, 15-1-708, 15-6-141, 15-23-101, 15-24-904, 15-31-132, 15-35-102, 16-2-109, 16-4-105, 16-4-111, 16-4-204, 16-4-301, 16-4-420, 17-5-709, 17-7-502, 18-4-132, 19-2-1001, 19-3-503, 19-9-1007, 19-20-404, 20-26-103, 33-17-211, 33-17-1203, 35-1-1312, 35-8-216, 35-12-703, 35-18-105, 35-18-106, 35-18-107, 35-18-206, 35-18-301, 35-18-313, 35-18-316, 39-3-213, 39-51-1307, 39-51-3207, 39-71-201, 39-71-2363, 39-72-711, 41-5-103, 41-5-206, 46-8-202, 50-51-103, 53-30-403, 60-3-201, 69-4-304, 69-4-501, 69-8-103, 69-8-502, 72-3-917, 75-10-103, 75-10-732, 76-3-601, 76-5-401, 77-2-102, 77-4-201, 77-4-210, 80-6-101, 80-7-816, 81-9-232, 81-23-303, 85-1-615, 85-9-104, 87-1-209, 87-1-221, 87-1-242, 87-1-246, AND 90-6-302, MCA; AND REPEALING SECTIONS 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, AND 90-3-1004, MCA, AND SECTION 2, CHAPTER 64, LAWS OF 1995."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 1-1-517, MCA, is amended to read:

"**1-1-517. State Korean war** veterans' **memorial -- Missoula.** (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state Korean ~~conflict [war]~~ war veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state Korean ~~conflict [war]~~ war veterans' memorial."

Section 2. Section 2-7-501, MCA, is amended to read:

"**2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions

"**2-7-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of commerce.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed control districts;

(ix) drainage districts;

(x) fire department relief associations;

(xi) fire districts;

(xii) hospital districts;

(xiii) incorporated cities or towns;

(xiv) irrigation districts;

(xv) mosquito districts;

(xvi) municipal housing authority districts;

(xvii) port authorities;

(xviii) ~~refuse disposal~~ solid waste management districts;

(xix) rural improvement districts;

(xx) school districts including a district's extracurricular funds;

(xxi) soil conservation districts;

(xxii) special education or other cooperatives;

(xxiii) television districts;

(xxiv) urban transportation districts;

(xxv) volunteer fire departments; and

(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances."

Section 3. Section 2-15-3316, MCA, is amended to read:

"2-15-3316. (Temporary) Executive director -- administration -- powers -- decisions. (1) The executive director must be hired by a joint, mutual decision of the presiding officer of the commission and

the director of the department. The department shall provide additional staff as necessary.

(2) The commission may expend funds to acquire agricultural easements under 2-15-3312 through 2-15-3322, without the approval of the ~~state land~~ board of land commissioners, on behalf of the state.

(3) An affirmative vote of at least nine members is required for approval of an agricultural easement acquisition. However, if three members vote against an acquisition, the acquisition may not be approved.

(4) For each agricultural easement acquisition approved, the commission shall use the acquisition criteria provided in 2-15-3317.

(5) The terms of an agricultural easement acquired under this section must be designed to conserve the core values set forth in 2-15-3315 and must specify the manner in which the agricultural easement will conserve the values. (Terminates July 1, 2003--sec. 15, Ch. 456, L. 1999.)"

Section 4. Section 7-1-2111, MCA, is amended to read:

"**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

(a) first class--all counties having a taxable valuation of $50 million or more;

(b) second class--all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class--all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class--all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class--all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class--all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class--all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the

county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324~~(13)~~(14);

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;

(g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141; and

(h) 6% of the taxable value of the county on January 1 of each tax year."

Section 5. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. (Temporary) Salary schedule for certain county officers.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is authorized must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the ~~1990~~ latest federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 for each 100 persons or major fraction of 100 persons in the county's population as determined by the ~~1990~~ latest federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform

for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the base salary is $50,000 a year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual base salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual base salary equal to 50% of the annual base salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the base salary of the county attorney is the same as the base salary established for full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder

of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as a deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) A county with a full-time county attorney may pay its full-time county attorney the same longevity increase that is provided for under subsection (3)(d)(i) for deputy county attorneys.

(iii) Unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify. (Terminates July 1, 2001--sec. 4, Ch. 411, L. 1999.)

7-4-2503. (Effective July 1, 2001) Salary schedule for certain county officers. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is authorized must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the ~~1990~~ latest federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 ~~per~~ for each 100 persons or major fraction of 100 persons in the county's population as determined by the ~~1990~~ latest federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 ~~per~~ a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 ~~per~~ a year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 ~~per~~ a year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the salary is $50,000 ~~per~~ a year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney is the same as that established for

full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not be included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 6. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation plus:

(a) (i) the value provided by the department of revenue in 15-36-324~~(13)~~(14), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness;

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 23%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 23%;

(b) for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 23%;

(c) for indebtedness to be incurred during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(d) for indebtedness to be incurred during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(e) for indebtedness to be incurred during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(f) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 23%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(g) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%; and

(h) for indebtedness to be incurred during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 7. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county plus:

(a) (i) the value provided by the department of revenue under 15-36-324~~(13)~~(14), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds;

(ii) for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, multiplied by 11.25%; and

(iii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;

(b) for general obligation bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(c) for general obligation bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for general obligation bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an

additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(g) for general obligation bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds for the construction or improvement of a detention center that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by subsection (1).

(3) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 8. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued -- excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county plus:

(a) (i) the value provided by the department of revenue under 15-36-324~~(13)~~(14). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%, and an additional 50% of the taxable value

attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%;

(b) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(c) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(g) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

(2) A county may issue bonds that, with all outstanding bonds and warrants, exceeds 11.25% but does not exceed 22.5% of the total of the taxable value of the property, as adjusted in subsection (1), plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5% and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not

exceed 22.5% of the total of the taxable value of the property within the county, as adjusted in this section."

Section 9. Section 7-16-2327, MCA, is amended to read:

"7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties given under law, may contract an indebtedness ~~in~~ on behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus:

(i) the value provided by the department of revenue under 15-36-324~~(13)~~(14);

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 13%, and an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 13%;

(iii) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(iv) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(v) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(vi) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 13%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(vii) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the

taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%; and

(viii) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 10. Section 7-21-2303, MCA, is amended to read:

"**7-21-2303. License required to do business as itinerant vendor -- fee.** For the purpose of defraying the expenses of regulation under this part, every itinerant vendor desiring to do business in any county of this state ~~must~~ shall, before commencing ~~such~~ business, pay to the county treasurer of ~~such~~ the county the sum of $15 for a license to conduct ~~such~~ the itinerant business for a period of ~~1 year~~ 90 days from the date ~~such~~ the license is issued."

Section 11. Section 10-2-102, MCA, is amended to read:

"**10-2-102. Duty of board -- employee qualifications.** (1) The board shall establish a statewide service for discharged veterans and their families, actively cooperate with state and federal agencies having to do with the affairs of veterans and their families, and promote the general welfare of all veterans and their families.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board ~~shall~~ must have served in the military forces of the United States during World War I, World War II, ~~or~~ the Korean war, or the Vietnam ~~conflicts~~ conflict and ~~shall~~ must have been honorably discharged ~~therefrom~~. Preference for employment ~~shall~~ must be given to disabled veterans."

Section 12. Section 13-2-301, MCA, is amended to read:

"**13-2-301. Close of registration -- procedure.** (1) The election administrator shall:

(a) close registrations for 30 days before any election~~, except as provided in 13-2-212(3)~~; and

(b) publish a notice specifying the day registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the county at least once a week for 3 weeks before the close of registration.

(2) Information to be included in the notice ~~shall~~ must be prescribed by the secretary of state.

(3) An individual who submits a completed registration form to the election administrator before the deadline provided in subsection (1)(a) is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of registration, and ~~thereafter~~ the qualified elector is then eligible to vote in the next election."

Section 13. Section 13-12-207, MCA, is amended to read:

"**13-12-207. Order of placement.** (1) The order on the ballot for state and national offices ~~shall~~ must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line ~~shall~~ must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party ~~shall~~ must be grouped together.

(b) United States senator;

(c) United States representative;

(d) ~~Governor~~ governor and lieutenant governor;

(e) ~~Secretary~~ secretary of state;

(f) ~~Attorney~~ attorney general;

(g) ~~State~~ state auditor;

(h) ~~Public~~ public service commissioners;

(i) ~~State~~ state superintendent of public instruction;

(j) ~~Clerk~~ clerk of the supreme court;

(k) ~~Chief~~ chief justice of the supreme court;

(l) ~~Justices~~ justices of the supreme court;

(m) ~~District~~ district court judges;

(n) ~~State~~ state senators;

(o) ~~Members~~ members of the house of representatives.

(2) The following order of placement ~~shall~~ must be observed for county offices:

(a) clerk of the district court;

(b) county commissioner;

(c) county clerk and recorder;

(d) sheriff;

(e) coroner;

(f) county attorney;

(g) county superintendent of schools;

(h) county auditor;

(i) public administrator;

(j) county assessor;

(k) county treasurer;

(l) surveyor;

(m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated~~, or confederated~~ local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments ~~shall~~ must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision ~~shall~~ must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they ~~shall~~ may not be listed, but the order of the offices to be filled ~~shall~~ must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office ~~shall~~ must precede the short-term."

Section 14. Section 13-15-401, MCA, is amended to read:

"**13-15-401. Governing body as board of county canvassers.** (1) The governing body of a county, or consolidated~~, or confederated~~ local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 days

after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county~~,~~ or consolidated~~, or confederated~~ local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office."

Section 15. Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) ~~[an amount equal to 25% of]~~ the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(h) estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made

according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Section 16. Section 15-1-708, MCA, is amended to read:

"15-1-708. Release of lien. (1) Upon payment in full of the unpaid tax plus penalty, if any, and accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

(2) Upon partial payment or whenever the department determines that a release or partial release of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(3) (a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may ~~transfer the debt to the department of administration for collection~~ proceed as provided in 17-4-104.

(b) ~~Subject to approval by the department, reasonable~~ Reasonable fees or costs of collection incurred by the department ~~of administration~~ may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be ~~returned to the department to be~~ applied to the debt, except that all fees or costs collected must be retained by the department ~~of administration~~. If less than the full amount of the debt is collected, the department ~~of administration~~ shall retain only a proportionate share of the collection fees or costs."

Section 17. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute ~~electric~~ electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electrical generation ~~facility property~~ facilities included in class thirteen;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class five;

(iv) railroad transportation property included in class twelve;

(v) airline transportation property included in class twelve; and

(vi) telecommunications property included in class thirteen.

(2) Class nine property is taxed at 12% of market value."

Section 18. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone,

microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute ~~electric~~ electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 19. Section 15-24-904, MCA, is amended to read:

"**15-24-904. (Temporary) Penalty for violation of law.** If any person, company, or corporation who is the owner or is in charge of any livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, assess the penalty provided in 15-8-309.

15-24-904. (Effective January 1, 2003) Penalty for violation of law. If a person, company, or corporation who is the owner or is in charge of livestock within this state fails to make the statement or statements as provided in 15-24-903, the department shall, after 10 days' notice to the person who failed to file the report, access the penalty provided in 15-8-309 ~~[on the]~~ on the per capita levy, as provided in 15-24-921."

Section 20. Section 15-31-132, MCA, is amended to read:

"**15-31-132. Tax credit for providing disability insurance for employees.** An employer is entitled to a credit against taxes otherwise due under this chapter for the amount of premiums for disability insurance ~~[issued under Title 33, chapter 22, part 12, and]~~ paid by the employer for ~~his~~ the employer's employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours ~~per~~ a week.

(2) At least 50% of each employee's insurance premium is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of $25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to $25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or ~~its~~ the employer's successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability."

Section 21. Section 15-35-102, MCA, is amended to read:

"15-35-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated

in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Btu" means British thermal unit and is the amount of heat required to raise 1 pound of water 1 degree Fahrenheit.

(6) "Coal enhancement facility" means a processing facility located at the site of the mine that produces a solid, liquid, or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal by:

(a) improving the Btu value per pound of the coal by at least 25%; or

(b) reducing the sulfur content of the coal by at least 25% when based on pounds per million Btu.

(7) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only 15 cents per ton.

(8) "Department" means the department of revenue.

(9) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, ~~electric~~ electrical energy, or any other form of energy.

(10) "Feedstock" means raw coal processed by a coal enhancement facility.

(11) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(12) "Produced" means severed from the earth.

(13) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(14) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(15) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(16) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(17) "Ton" means 2,000 pounds.

(18) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203. (Terminates December 31, 2005--sec. 5, Ch. 318, L. 1995.)

15-35-102. (Effective January 1, 2006) Definitions. As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement

as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how ~~such~~ the royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of ~~such~~ federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, ~~electric~~ electrical energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed ~~his~~ the purchaser's base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 22. Section 16-2-109, MCA, is amended to read:

"**16-2-109. Number and location of agency liquor stores.** (1) (a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same methods used for determining increases in the

retail license quota system as provided in ~~16-4-501~~ 16-4-201.

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least 5 years."

Section 23. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,

governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The ~~division~~ department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food

business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the department before October 1, 1997, if the application's mail cover is postmarked by the United States postal service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the department before October 1, 1997. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before October 1, 1997."

Section 24. Section 16-4-111, MCA, is amended to read:

"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the ~~liquor division~~ department, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the ~~liquor division~~ department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted

to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 25. Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer -- catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a

new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the ~~liquor division~~ department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for ~~on-premise~~ on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (2) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other

fixed place on the premises."

Section 26. Section 16-4-301, MCA, is amended to read:

"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event ~~shall~~ is, in the discretion of the ~~liquor division be~~ department, entitled to a special permit to sell beer and table wine to the patrons of ~~such~~ that event to be consumed within the enclosure ~~wherein~~ in which the event is held, except as provided in subsection (1)(d).

(b) The application of ~~any such~~ the association or corporation ~~shall~~ must be presented 3 days in advance and ~~shall~~ must describe the location of ~~such~~ the enclosure where ~~such~~ the event is to be held, the nature of the event, and the period ~~when~~ during which it is contemplated that the event will be held. The application ~~shall~~ must be accompanied by the amount of the permit fee and a written statement of approval of the premises where the event is to be held issued by the local law enforcement agency that has jurisdiction over the premises where the event is to be held.

(c) The permit issued to ~~such~~ the association or corporation is a special permit but ~~shall~~ does not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon ~~such~~ the grounds and during the period described in the application and for 1 day thereafter.

(d) A special permit issued under this subsection (1) for the purpose of selling and serving beer at an event conducted on the premises of a county fairground or public sports arena authorizes the permitholder to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code ~~shall~~ is, in the discretion of the department, without notice or hearing as provided in 16-4-207, ~~be~~ entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at ~~such~~ the post or lodge to members and their guests only, to be consumed within the hall or building of ~~such~~ the post or lodge.

(b) The application of ~~such~~ a nationally chartered veterans' organization or lodge of a recognized national fraternal organization ~~shall~~ must describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit ~~issued shall~~ may be issued for a 24-hour period only, ending at 2 a.m., and the department may not issue more than 12 ~~such~~ permits to any ~~such~~ post or lodge during a calendar year."

Section 27. Section 16-4-420, MCA, is amended to read:

"**16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors ~~shall~~ must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock ~~shall~~ must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals ~~shall~~ must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange ~~shall~~ must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange ~~shall~~ must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department that:

(i) ~~that~~ the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) ~~that~~ the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) ~~that~~ the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to

defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded

to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate ~~set in 16-1-409(4)~~ of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at

the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 28. Section 17-5-709, MCA, is amended to read:

"**17-5-709. Continued tax deposit limit on additional bonds.** (1) ~~(a)~~ The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

~~(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in 90-3-1004 of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.~~

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund ~~and coal producer's license tax bond account established in 90-3-1004~~, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenue, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal

severance tax bonds while the bonds are outstanding."

Section 29. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; ~~15-34-115;~~ 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability

is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

Section 30. Section 18-4-132, MCA, is amended to read:

"**18-4-132. Application.** (1) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

(6) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(7) (a) This chapter does not apply to ~~electric~~ electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 31. Section 19-2-1001, MCA, is amended to read:

"**19-2-1001. Maximum contribution and benefit limitations.** (1) Employee contributions paid to and retirement benefits paid from the retirement systems may not exceed the annual limits on contributions and benefits ~~in~~, respectively, allowed by section 415 of the Internal Revenue Code.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the retirement system's law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member

because of sections 125, 403(b), or 457 of the Internal Revenue Code."

Section 32. Section 19-3-503, MCA, is amended to read:

"**19-3-503. (Temporary) Election to qualify military service.** (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2).

(b) Except as provided in subsection (3), to qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1) or (3).

(3) (a) A member may, prior to retirement, receive up to 4 years of creditable service for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean ~~conflict~~ war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has at least 10 years of membership service in the retirement system and is not otherwise ineligible under subsection (2).

(b) To qualify this service, a member shall:

(i) submit to the board a completed application form and proper certification of the member's military service; and

(ii) contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and based on as many succeeding years as are required to qualify this service, with regular interest from the date on which the member becomes eligible for this benefit to the date on which the member makes the required

contribution.

(c) Service qualified pursuant to this subsection (3) is in addition to the service that may be qualified under subsection (1), except that a member may not receive duplicate credit for the same years of military service. (Terminates July 1, 2001--sec. 4, Ch. 494, L. 1999.)

19-3-503. (Effective July 1, 2001) Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-707 or is ineligible under subsection (2).

(b) To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1)."

Section 33. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Minimum benefit adjustment. (1) The benefits that are paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the ~~division~~ board shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children

collectively."

Section 34. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean ~~conflict~~ war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a written application form and proper certification of the member's military service.

(2) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 35. Section 20-26-103, MCA, is amended to read:

"20-26-103. Definitions. As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" includes the units of the university system and any private postsecondary institution ~~accredited or licensed under chapter 30 of this title~~.

(2) "Program advisory council" means the student loan advisory council created by 2-15-1520.

(3) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana."

Section 36. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications -- application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code ~~which~~ that govern the applicant's operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall

verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or ~~authorization~~ authority under 35-1-1312 or filed articles of incorporation under 35-1-220.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708(1)(a). The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 37. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing education -- basic requirements -- exceptions. (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title

insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 2 1/2 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212~~(7)(d) through (7)(k)~~(6)(d) through (6)(i);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) a person who only executes surety bail bonds; or

(f) an insurance producer or consultant otherwise exempted by the commissioner."

Section 38. Section 35-1-1312, MCA, is amended to read:

"**35-1-1312. Certificate of existence or ~~authorization~~ authority.** (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of ~~authorization~~ authority for a foreign corporation.

(2) A certificate of existence or ~~authorization~~ authority must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or ~~authorization~~ authority of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-1-1104 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or ~~authorization~~ authority issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state."

Section 39. Section 35-8-216, MCA, is amended to read:

"**35-8-216. Certificate of existence or ~~authorization~~ authority.** (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of ~~authorization~~ authority for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of ~~authorization~~ authority for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or ~~authorization~~ authority issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state."

Section 40. Section 35-12-703, MCA, is amended to read:

"**35-12-703. Liability to third parties.** (1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless, in addition to the exercise of the rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner

or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505~~(2)(a) and (2)(b)~~(1)(b)(i) and (1)(b)(ii), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner."

Section 41. Section 35-18-105, MCA, is amended to read:

"**35-18-105. Permissible purposes for incorporation.** Cooperative nonprofit membership corporations may be organized under this chapter:

(1) for the purpose of supplying ~~electric~~ electrical energy and promoting and extending the use of ~~electric~~ electrical energy in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of additional facilities as are required to ~~assure~~ ensure the availability of service to the widest practicable number of users of telephone service, cable television service, or broadband facilities; and

(3) for purposes allowable under federal authorization, including rural economic development activities."

Section 42. Section 35-18-106, MCA, is amended to read:

"**35-18-106. Powers of cooperatives.** A cooperative has power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock in other cooperatives or corporations;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and ~~to~~ own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities, or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and

equipment, and all kinds or classes of real or personal property, which may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its ~~then-owned~~ then-owned or after-acquired real or personal property, assets, franchises, ~~revenues~~ revenue, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of the thoroughfares and lands as are imposed by the respective authorities having jurisdiction of them upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit ~~electric~~ electrical energy and distribute, sell, supply, and dispose of ~~electric~~ electrical energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom ~~electric~~ electrical energy is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute,

install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures;

(c) make loans to persons to whom ~~electric~~ electrical energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish additional telephone lines, facilities, and systems as are required to ~~assure~~ ensure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character and, in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures;

(14) ~~do and~~ perform all other acts ~~and things~~ and ~~have and~~ exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law."

Section 43. Section 35-18-107, MCA, is amended to read:

"35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying ~~electric~~ electrical energy in rural areas and owning and operating electric transmission or distribution lines in ~~such~~ that state ~~shall be~~ is permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) ~~Any such~~ The foreign corporation, as a prerequisite to the extension of its lines into and the

transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or ~~vice-president~~ vice president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event that any process ~~shall be~~ is served upon the secretary of state, ~~he~~ the secretary of state shall ~~forthwith~~ as soon as possible forward the ~~same~~ process by ~~registered or~~ certified mail to ~~such~~ the corporation at the address ~~thereof~~ of the corporation specified in ~~such~~ the instrument.

(3) ~~Any such~~ The corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in ~~such~~ the courts.

(4) ~~Any such foreign~~ The corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the ~~revenues~~ revenue and income to be derived ~~therefrom~~ from them."

Section 44. Section 35-18-206, MCA, is amended to read:

"35-18-206. Existing corporations -- reorganization under ~~this~~ chapter -- articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying ~~electric~~ electrical energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of ~~such~~ the corporation into a cooperative under this chapter and proposed articles of conversion to give effect ~~thereto shall~~ to the conversion must be first approved by the board of trustees or the board of directors, as the case may be, of ~~such~~ the corporation. The proposed articles of conversion ~~shall~~ must recite in the caption that they are executed pursuant to this chapter and ~~shall~~ must state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of ~~such~~ the corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which ~~such~~ the corporation was organized;

(e) the name assumed by ~~such~~ the corporation;

(f) a statement that ~~such~~ the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of ~~such~~ the corporation into memberships ~~therein~~ in the corporation after completion of the conversion; and

(h) any provisions not inconsistent with this chapter ~~deemed~~ considered necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of ~~such~~ the corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of ~~such~~ the corporation ~~shall~~ must then be submitted to a vote of the members or stockholders, as the case may be, of ~~such~~ the corporation at any duly held annual or special meeting ~~thereof~~ of the corporation, the notice of which ~~shall~~ must set forth full particulars concerning the proposed conversion. The proposition for the conversion of ~~such~~ the corporation into a cooperative under this chapter and the proposed articles of conversion, with ~~such~~ any amendments ~~thereto as~~ to the articles of conversion that the members or stockholders of ~~such~~ the corporation ~~shall~~ choose to make ~~therein, shall be deemed~~ is considered to be approved upon the affirmative vote of not less than two-thirds of those members of ~~such~~ the corporation voting ~~thereon~~ on the articles of conversion at ~~such~~ the meeting or, if ~~such~~ the corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of ~~such~~ the corporation represented at ~~such~~ the meeting.

(3) Upon ~~such~~ approval by the members or stockholders of ~~such~~ the corporation, articles of conversion in the form approved by ~~such~~ the members or stockholders of ~~such~~ the corporation ~~shall~~ must be executed on behalf of ~~such~~ the corporation by its president or ~~vice-president~~ vice president and its corporate seal ~~shall~~ must be affixed ~~thereto~~ to the articles of conversion and attested by its secretary or assistant secretary. The president or ~~vice-president~~ vice president executing ~~such~~ the articles of conversion on behalf of ~~such~~ the corporation shall also make and annex ~~thereto~~ to the articles of conversion an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of ~~such~~ the corporation into a cooperative under this chapter and ~~such~~ the articles of conversion were ~~duly~~ complied with.

(4) ~~Such~~ The articles of conversion and affidavit ~~shall~~ must be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter ~~shall be deemed to include~~ includes the articles of conversion of a converted corporation."

Section 45. Section 35-18-301, MCA, is amended to read:

"35-18-301. Members. (1) ~~No~~ A person who is not an incorporator ~~shall~~ may not become a member of a cooperative unless ~~such~~ the person ~~shall agree~~ agrees to use ~~electric~~ electrical energy or telephone service furnished by the cooperative when ~~such electric~~ the electrical energy or telephone service ~~shall be~~ is available through its facilities. The bylaws may provide that any person, including an incorporator, ~~shall cease~~ ceases to be a member of a cooperative if ~~he shall fail or refuse~~ the person fails or refuses to use ~~electric~~ electrical energy or telephone service made available by the cooperative or if ~~electric~~ electrical energy or telephone service ~~shall not be~~ is not made available to ~~such~~ the person by the cooperative within a specified time after ~~such~~ the person ~~shall have~~ has become a member ~~thereof~~ of the cooperative.

(2) Membership in the cooperative ~~shall not be~~ is not transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership."

Section 46. Section 35-18-313, MCA, is amended to read:

"35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies ~~electric~~ electrical energy or telephone service to its members ~~shall be~~ is divided into two or more voting districts and that in respect to each ~~such~~ voting district:

(a) a designated number of trustees ~~shall~~ must be elected by the members residing ~~therein~~ in the district;

(b) a designated number of delegates ~~shall~~ must be elected by the members residing ~~therein~~ in the district; or

(c) both ~~such~~ the trustees and delegates ~~shall~~ must be elected by ~~such~~ members residing in the district.

(2) ~~In any such case the~~ The bylaws ~~shall~~ must prescribe the manner in which ~~such~~ the voting districts and the members ~~thereof~~ of the voting districts and the delegates and trustees, if any, elected ~~therefrom shall~~ from the voting districts are to function and the powers of the delegates, which may include the power to elect trustees.

(3) ~~No~~ A member at any voting district meeting and ~~no~~ a delegate at any meeting ~~shall~~ may not vote by proxy or by mail."

Section 47. Section 35-18-316, MCA, is amended to read:

"**35-18-316. Refunds to members -- retention of unclaimed refunds.** (1) Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

(f) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of ~~electric~~ electrical energy and other services made available by the cooperative.

(2) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes."

Section 48. Section 39-3-213, MCA, is amended to read:

"**39-3-213. Disposition of wages.** (1) The commissioner of labor shall deposit wages collected under parts 2 and 4 of this chapter into the expendable trust fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the expendable trust fund do not bear interest. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) that remain unclaimed for more than ~~1 year~~ 6 months from the date of issuance must be returned to the state treasurer for cancellation in accordance with 17-8-303."

Section 49. Section 39-51-1307, MCA, is amended to read:

"39-51-1307. Collection of unpaid taxes, penalties, and interest by offset. (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the ~~state auditor's office~~ department of revenue, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the ~~state auditor~~ department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the ~~state auditor~~ department of revenue. If less than the full amount of the debt is collected, the ~~state auditor~~ department of revenue shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset."

Section 50. Section 39-51-3207, MCA, is amended to read:

"39-51-3207. Authority to determine uncollectibility of debts -- transfer of debts for collection -- liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest, or overpaid benefits under 39-51-3206 and interest, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of ~~administration~~ revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of ~~administration~~ revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of ~~administration~~ revenue. If less than the full amount of the debt is collected, the ~~state auditor~~ department of revenue shall retain only a proportionate share of the collection fees or costs."

Section 51. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department is required to administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation ~~administrative~~ administration fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 3% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No.

2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer or insurer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and

plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(6) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(7) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 52. Section 39-71-2363, MCA, is amended to read:

"**39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. ~~The~~ Subject to the provisions of subsection (2)(b), the administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the

investment income earned in the prior fiscal year.

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 53. Section 39-72-711, MCA, is amended to read:

"**39-72-711. Lump-sum and compromise settlements.** (1) ~~No~~ A final and binding award made upon any claim pursuant to this chapter may not be converted into a lump-sum payment, in whole or in part, except as provided in ~~this section or~~ 39-72-712 or this section.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405~~(2)~~, a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, ~~no~~ such settlements are not binding on the parties until approved by the department. After the department approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 54. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(8) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(9) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(10) "Department" means the department of corrections provided for in 2-15-2301.

(11) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) ~~or (1)(c)~~ or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(12) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(13) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(14) "Family" means the parents, guardians, legal custodians, and siblings or other youth with

whom a youth ordinarily lives.

(15) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(16) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(17) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(18) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(19) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(20) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(21) "Judge", when used without further qualification, means the judge of the youth court.

(22) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(23) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(24) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(25) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(26) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(27) "Probable cause hearing" means the hearing provided for in 41-5-332.

(28) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(29) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(30) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(31) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(32) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(33) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(34) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

(35) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(36) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

(37) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(38) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (38)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(39) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(40) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

(41) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(42) "Youth care facility" has the meaning provided in 41-3-1102.

(43) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

(44) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers.

Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(45) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(46) "Youth in need of care" has the meaning provided for in 41-3-102.

(47) "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 55. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii);~~

~~(xiii)~~(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

~~(xiii)~~(xii) escape as defined in 45-7-306;

(xiii) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(iii) and (1)(b)(v) through (1)(b)(xii).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer

the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 56. Section 46-8-202, MCA, is amended to read:

"**46-8-202. Public defender's office.** Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and ~~such~~ any assistant public defenders ~~as~~ that may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of ~~such~~ the office ~~shall be at~~ must be paid by the state ~~expense payable~~ according to procedures established under 3-5-902(1) and, to the extent that those costs are not paid by the state, ~~at~~ must be paid by the county ~~expense~~ in accordance with 3-5-901~~(3)~~(4) and 3-5-902(1)."

Section 57. Section 50-51-103, MCA, is amended to read:

"**50-51-103. Department authorized to adopt rules.** (1) The department may adopt rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect the public health and safety.

(2) Rules applicable to a bed and breakfast, hotel, motel, roominghouse, boardinghouse, or tourist home may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, ~~and~~ fire and life safety, food service, ~~rules for bed and breakfast establishments,~~ staggered license expiration dates, and reimbursement of local governments for inspections and enforcement.

(3) The department shall adopt rules governing guest ranches and outfitting and guide facilities. The rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only rules to:

(a) ensure that the establishment has safe drinking water and an adequate water supply;

(b) ensure an adequate and sanitary sewage system and ensure adequate and sanitary refuse collection and disposal ~~system~~;

(c) address food safety concerns, such as adequate storage, refrigeration, and food handling; and

(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.

(4) Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act.

(5) The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment.

(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment."

Section 58. Section 53-30-403, MCA, is amended to read:

"**53-30-403. Boot camp incarceration program -- eligibility -- rulemaking.** (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate ~~must~~:

(a) must be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by death, except as provided in 46-18-201~~(1)(a)(xiv)~~(4)(o);

(b) shall obtain the concurrence of the sentencing court; and

(c) shall pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Section 59. Section 60-3-201, MCA, is amended to read:

"**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows:

(a) 9/10 of 1% to the state park account;

(b) 15/28 of 1% to a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% to an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% to the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the highways in this state selected and designated by the commission;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended in accordance with this title. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, except

fuel for which refunds have been made, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) (a) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, to promote snowmobile safety, for enforcement purposes, and for the control of noxious weeds.

(b) Of the amounts deposited in the snowmobile account:

(i) 13% of the amount deposited must be used by the department of fish, wildlife, and parks to promote snowmobile safety and education and to enforce snowmobile laws. Two-thirds of the 13% deposited must be used to promote snowmobile safety and education and one-third of the 13% deposited must be used for the enforcement of snowmobile laws.

(ii) 1% of the amount deposited must be credited to the ~~Montana~~ noxious weed ~~control~~ management trust fund provided for in 80-7-811.

(c) The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 15/28 of 1% is used for propelling registered snowmobiles in this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, except fuel for which refunds have been made, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 60. Section 69-4-304, MCA, is amended to read:

"**69-4-304. Exclusion for ~~high-voltage~~ high-voltage transmission lines.** Electric facilities ~~shall~~ do not include any facilities used or intended to be used for the transmission of ~~electric~~ electrical energy at nominal voltages in excess of 25,000 volts."

Section 61. Section 69-4-501, MCA, is amended to read:

"**69-4-501. Definitions.** The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

(a) alleviate a condition that constitutes a clear and present danger to life or property; or

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

(a) a condition that constitutes a clear and present danger to life or property; or

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

(6) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(7) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

(8) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.

(9) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location or absence of underground facilities, in accordance with the current color code standard of the

American public works association. Marking must include identification letters indicating the specific type of underground facility and the width of the facility if it is greater than 6 inches.

(10) "One-call notification center" means a service through which a person may request a locating and marking of underground facilities.

(11) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency~~;~~ and includes a trustee, receiver, assignee, or personal representative of the listed entities.

(12) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(13) "Underground facility" means a facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, ~~electric~~ electrical energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items."

Section 62. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ electrical energy, and takes title to ~~electric~~ electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~ electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the

transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of ~~electric~~ electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,

chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(35)~~(34) "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

Section 63. Section 69-8-502, MCA, is amended to read:

"**69-8-502. Tax revenue analysis.** ~~(1)~~ The revenue and taxation interim committee, as provided for in 5-5-227, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

~~(2) On or before November 30, 1998, the [former] revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the [former] revenue oversight committee should place comparable state and local taxation burdens upon all market participants.~~"

Section 64. Section 72-3-917, MCA, is amended to read:

"**72-3-917. Distribution to person under disability.** (1) A personal representative may discharge ~~his~~ the personal representative's obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the will, the personal representative may discharge ~~his~~ the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104, 72-5-501, or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.

(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of ~~that~~ the disabled person, but the receiving person may not accept any pay ~~himself~~ except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."

Section 65. Section 75-10-103, MCA, is amended to read:

"**75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial

operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or ~~refuse disposal~~ solid waste management district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(11) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 66. Section 75-10-732, MCA, is amended to read:

"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a

hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste ~~and Underground Storage Tank~~ Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed

to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."

Section 67. Section 76-3-601, MCA, is amended to read:

"**76-3-601. Submission of preliminary plat for review.** (1) Except when a plat is eligible for ~~expedited~~ summary review pursuant to 76-3-505, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 68. Section 76-5-401, MCA, is amended to read:

"**76-5-401. Permissible open-space uses.** The following open-space uses ~~shall be~~ are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

(1) agricultural uses;

(2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;

(3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, ~~game farms~~ alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;

(4) forestry, including processing of forest products with portable equipment;

(5) residential uses such as lawns, gardens, parking areas, and play areas;

(6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406."

Section 69. Section 77-2-102, MCA, is amended to read:

"**77-2-102. Application for easement.** (1) Application for an easement on state land must be made to the department. Except as provided in subsections (3) and (4), the application must describe the proposed right-of-way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of the official plat of the proposed highway, street, or other easement, verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by the proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats must show all these facts for smaller subdivisions as the circumstances may render desirable for the state.

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

(4) If the purpose of the right-of-way applied for is the transmission or distribution of ~~electric~~ electrical energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. The accuracy requirements of subsection (3) must be met. The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, heritage property would not be impacted."

Section 70. Section 77-4-201, MCA, is amended to read:

"77-4-201. Lease or license of power sites. It ~~shall be~~ is unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydroelectric energy in commercial quantities~~; but~~. However, the board ~~is hereby granted power and authority to~~ may issue a lease or license to any person, corporation, or municipality for the development of ~~such~~ power sites and the distribution, use, and disposition of the ~~electric~~ electrical energy generated ~~thereon,~~ on the sites as ~~herein more~~ specifically provided in this chapter."

Section 71. Section 77-4-210, MCA, is amended to read:

"77-4-210. Joint development with ~~the~~ United States. (1) If the state land constituting ~~such~~ a power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use, and disposition of the ~~electric~~ electrical energy generated at ~~such~~ the power site under the laws of the United States and regulations issued pursuant ~~thereto~~ to those laws.

(2) ~~Such~~ The lease or license may be granted for a term not exceeding 50 years.

(3) The share or percentage of ownership of the state in ~~such~~ the joint power site ~~shall~~ must be in proportion to the total contribution that the lands of the state make to the value of the entire power site. Before the share of the state in ~~such~~ the power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States.

(4) The fee or compensation ~~from time to time~~ to be paid to the state under ~~such~~ the lease or

license ~~shall~~ must be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to~~, provided, however, that it shall~~. However, the fee or compensation may not be less than the full market value of the estate or interest disposed of in ~~such~~ the lands through the granting of the lease or license to be carefully ascertained from all available sources.

(5) Before ~~such~~ the lease or license is issued, notice ~~thereof~~ of the lease or license must be given in the same manner as ~~herein~~ required in this chapter for the issuance of a separate lease or license by the state."

Section 72. Section 80-6-101, MCA, is amended to read:

"**80-6-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means a disease or abnormal condition of egg, larval, pupal, or adult stages of bees. Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

~~(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift.~~"

Section 73. Section 80-7-816, MCA, is amended to read:

"80-7-816. Account -- deposit -- investment. (1) There is an account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the fee imposed in 61-3-510 must be deposited in the account and must be expended as provided in 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund."

Section 74. Section 81-9-232, MCA, is amended to read:

"81-9-232. Regulation of equine, ~~game farm~~ alternative livestock ranch animal, or rabbit carcasses or products. (1) Equines, ~~game farm~~ alternative livestock ranch animals, and rabbits and their carcasses, parts ~~thereof~~ of carcasses, and meat food products must be slaughtered and prepared in establishments separate from the establishments where cattle, buffalo, sheep, swine, or goats are slaughtered or their carcasses, parts ~~thereof~~ of carcasses, or meat food products are prepared.

(2) The board may by rule otherwise limit the entry of equine, ~~game farm~~ alternative livestock ranch animal, or rabbit carcasses, parts of carcasses, meat food products, and other materials into any establishment where inspection under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 is

maintained, under conditions as it may prescribe to ~~assure~~ ensure that allowing the entry of the articles into inspected establishments will be consistent with the purposes of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236."

Section 75. Section 81-23-303, MCA, is amended to read:

"**81-23-303. Rules of fair trade practices.** The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Except for provisions regarding the requirement for first call on Montana milk supplies, as provided in 81-23-302(10), and rules adopted pursuant to 81-23-302~~(10)~~(11), fair trade practice rules must contain but are not limited to provisions prohibiting the following methods of doing business that are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk that is distributed to any person, including agencies of the federal, state, or local government."

Section 76. Section 85-1-615, MCA, is amended to read:

"**85-1-615. Security interests -- purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the renewable resource grant and loan state special revenue account or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage

covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604~~(3)(d)~~ or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

Section 77. Section 85-9-104, MCA, is amended to read:

"85-9-104. Limitations. (1) This chapter may not be construed to grant to the district the power to generate, distribute, or sell ~~electric~~ electrical energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, the department of environmental quality, or the department of fish, wildlife, and parks, but are supplementary to and in aid of those rights, powers, duties, and functions."

Section 78. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The

department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or ~~game farms~~ alternative livestock ranches;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the

balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) The department shall convey lands and waters without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(5) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(6) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 79. Section 87-1-221, MCA, is amended to read:

"**87-1-221. Acquisition, importation, and propagation of fish and game -- waterfowl food.** The department may:

(1) acquire by gift, purchase, capture, or otherwise any fish, game, game birds, or animals for propagation, experimental, or scientific purposes;

(2) provide for the importation of game birds and game and fur-bearing animals and for the protection, propagation, and distribution of imported or native birds and animals;

(3) use fish and game funds necessary for the construction, maintenance, operation, upkeep, and repair of fish hatcheries, ~~game farms~~ alternative livestock ranches, or other property or means and appliances for the protection and propagation of fish, game and fur-bearing animals, or game or nongame birds;

(4) appropriate ~~moneys~~ money from the funds at its disposal for the extermination or eradication of predatory animals that destroy fish, game~~,~~ or fur-bearing animals, or game or nongame birds;

(5) spend fish and game funds necessary to introduce and propagate wild waterfowl food and for that purpose may secure expert advice as to what kinds of waterfowl foods are adapted to the climate, soil, and waters of this state."

Section 80. Section 87-1-242, MCA, is amended to read:

"**87-1-242. (Temporary) Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature.

(a) Class B-10, nonresident combination, $77;

(b) Nonresident antelope, $20;

(c) Nonresident moose, $20;

(d) Nonresident mountain goat, $20;

(e) Nonresident mountain sheep, $20;

(f) Class D-1, nonresident mountain lion, $20;

(g) Nonresident black bear, $20;

(h) Nonresident wild turkey, $10;

(i) Class AAA, ~~sportsman's~~ combination sports, $7;

(j) Class B-11 nonresident deer combination, $200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1), except outfitter-sponsored Class B-10 and Class B-11 licenses subject to variable pricing under 87-1-268, must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection (4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by

87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat. (Terminates March 1, 2006--secs. 1, 2, Ch. 241, L. 1993; sec. 6, Ch. 544, L. 1999.)"

Section 81. Section 87-1-246, MCA, is amended to read:

"**87-1-246. Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance upland game bird populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;

(2) Class B-1, nonresident upland game bird, $23;

(3) Class AAA, ~~sportsman's~~ combination sports, $2; and

(4) Class B-10, nonresident big game combination, $23."

Section 82. Section 90-6-302, MCA, is amended to read:

"**90-6-302. Definitions.** In this part, the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific ~~revenues~~ revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Facility" means a facility that is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of the large-scale mineral development.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.

(5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) ~~refuse disposal~~ solid waste management district;

(d) county water and sewer district;

(e) county water district;

(f) county sewer district; or

(g) park district.

(6) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a large-scale mineral development to the impact fund of an affected unit of local government pursuant to an approved impact plan to be expended for the purpose or purposes identified in the plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts."

NEW SECTION. **Section 83. Code commissioner instruction.** The code commissioner shall renumber 19-20-622 as an integral part of Title 19, chapter 20, part 7.

NEW SECTION. **Section 84. Repealer.** (1) Sections 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, and 90-3-1004, MCA, are repealed.

(2) Section 2, Chapter 64, Laws of 1995, is repealed.

- END -

APPROVED BY COMM ON
STATE ADMINISTRATION

HOUSE BILL NO. 25

INTRODUCED BY P. SLITER

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 1-1-517, 2-7-501, 2-15-3316, 7-1-2111, 7-4-2503, 7-7-2101, 7-7-2203, 7-14-2524, 7-16-2327, 7-21-2303, 10-2-102, 13-2-301, 13-12-207, 13-15-401, 15-1-501, 15-1-708, 15-6-141, 15-23-101, 15-24-904, 15-31-132, 15-35-102, 16-2-109, 16-4-105, 16-4-111, 16-4-204, 16-4-301, 16-4-420, 17-5-709, 17-7-502, 18-4-132, 19-2-1001, 19-3-503, 19-9-1007, 19-20-404, 20-26-103, 33-17-211, 33-17-1203, 35-1-1312, 35-8-216, 35-12-703, 35-18-105, 35-18-106, 35-18-107, 35-18-206, 35-18-301, 35-18-313, 35-18-316, 39-3-213, 39-51-1307, 39-51-3207, 39-71-201, 39-71-2363, 39-72-711, 41-5-103, 41-5-206, 46-8-202, 50-51-103, 53-30-403, 60-3-201, 69-4-304, 69-4-501, 69-8-103, 69-8-502, 72-3-917, 75-10-103, 75-10-732, 76-3-601, 76-5-401, 77-2-102, 77-4-201, 77-4-210, 80-6-101, 80-7-816, 81-9-232, 81-23-303, 85-1-615, 85-9-104, 87-1-209, 87-1-221, 87-1-242, 87-1-246, AND 90-6-302, MCA; AND REPEALING SECTIONS 15-34-101, 15-34-102, 15-34-103, 15-34-104, 15-34-105, 15-34-110, 15-34-111, 15-34-112, 15-34-115, 15-34-116, AND 90-3-1004, MCA, AND SECTION 2, CHAPTER 64, LAWS OF 1995."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ALLAN WALTERS**, on January 8, 2001 at 9:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Allan Walters, Chairman (R)
Rep. Debby Barrett, Vice Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Juanita Padden, Committee Hearing Secretary

Please Note: There are no summary minutes or testimony for this hearing, due to the resignation of the Committee Secretary, Juanita Padden. There are two exhibits, a legislative tape log, and a visitor register which have been scanned and are available for research purposes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 25, 1/4/2001
Executive Action: None

EXHIBIT(sth05a01) and **EXHIBIT(sth05a02).**

ADJOURNMENT

Adjournment : 10:00 A.M.

Chairman Rep. Allan Walters

AW

EXHIBIT(sth05aad)

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
HOUSE STATE ADMINISTARTION COMMITTEE

DATE 1-8-01

BILL NO. HB 25

SPONSOR(S) Paul Slitter

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Brate Galda		FWP
P O I	Ginny Petesch		Code Commissioner
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ALLAN WALTERS**, on January 9, 2001 at 9:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Allan Walters, Chairman (R)
Rep. Debby Barrett, Vice Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Juanita Padden Committee Hearing Secretary

Please Note: There are no summary minutes or testimony for this hearing, due to the resignation of the Committee Secretary, Juanita Padden. There are two exhibits, and a visitor register which have been scanned and are available for research purposes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 112, 1/5/2001; HB 47, 1/5/2001
Executive Action: HB 25

EXHIBIT(sth06a01)EXHIBIT(sth06a02)

ADJOURNMENT

Adjournment: 9:30 A.M.

REP. ALLAN WALTERS, Chairman

Susie Hamilton, House Scanner

AW/JP/SH

EXHIBIT(sth06aad)

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 23, 2001 at 9:02 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 25, 2/2/2001; SB 222, 2/2/2001
Executive Action: HB 25; SB 25; SB 29; SB 128; SB 170

HEARING ON HB 25

Sponsor: **REP. PAUL SLITER, HD 76, KALISPELL**

Proponents: **Greg Petesch, Code Commissioner**

Opponents: **None**

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76,KALISPELL, opened on HB 25, a Code Commissioner bill. He said this piece of legislation came up every session to provide for corrections in erroneous references and defects in the statutes. He pointed out that one of the changes repealed the coal producers license tax and eliminated two references to that tax. He noted there were probably 100 small changes contained within the statutes.

Proponents' Testimony:

Greg Petesch, Code Commissioner, walked the new members of the committee through the process used to produce the bill. He said over the interim they reviewed the Code for errors or problems, then compiled a report submitted to the Legislative Council. A bill, in this case, HB 25, corrected those errors identified in the report. To ensure that changes were not made to substantive law in the Code Commissioner bill, a draft copy of the sections affecting each agency was sent to that agency for review. He then read through a bulleted list and picked out some specifics of HB 25.

Opponents' Testimony:

None

Questions by Committee:

None

Closing by Sponsor:

REP. SLITER closed on HB 25, saying it was important to keep the statutes cleaned up.

presented the example of a bill recently debated in the committee regarding videotape rentals. He noted that most people would want to point out that it was not legislative intent to incarcerate a person for not returning a video.

SEN. HALLIGAN asked about the whole story and whether the accused as well as the prosecution could divulge all information known. **SEN. O'NEIL** believed that under the current system of due process that the prosecution also had a say and the jury would want to hear both sides equally.

SEN. DUANE GRIMES asked what case prompted this piece of legislation. **SEN. O'NEIL** said there was no specific case, it was a general thing. One of the issues was the federal government imposing sentences. Also a case involving a sheep rancher defending himself, but not being allowed to argue self defense. He felt it was time to reduce the numbers in prison and this bill would give the accused more rights as well as the jury more rights.

CHAIRMAN GROSFIELD asked why apply this to criminal cases and not also to civil cases. **SEN. O'NEIL** felt it was already available to a certain degree in civil cases.

Closing by Sponsor:

SEN. O'NEIL closed on SB 222. He said it would be good public policy to empower the jury to let them know they are hearing the case rather than having them in the dark without the full story. It would be healthy. It attempted to make something that was not working perfectly a little better, not fix something that wasn't broken. He reiterated that the U.S. had the highest rate of incarceration in the world, and said we couldn't afford it. Therefore, to cut expenses, this would be a good alternative. He argued that it would not create a situation where juries acquitted a horrible criminal, but would allow them to acquit decent people who had been caught in a situation that did not strictly apply to them. The jury would have the ability to make something right.

EXECUTIVE ACTION ON HB 25

Motion/Vote: SEN. GRIMES moved that **HB 25 BE CONCURRED IN.**
Discussion: None
Motion carried 8-0, SEN. HOLDEN excused. **SEN. GRIMES** carried the bill on the Senate Floor.

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **House Bill 25** (third reading copy – blue) **be concurred in.**

Signed: _____
Senator Lorents Grosfield, Chair

To be carried by Senator Duane Grimes

- END -

Committee Vote:
Yes 8, No 0.

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DATE Jan. 23, 2001

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB222 HB25

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Connor	444-2026	MT CTY ATTY Assn	222		X
Greg Petesch	3064	Code Commissioner	HB25	Y	
Miller Fellows	721-9020	MTCP	SB222	X	
Chad Wright	449.4122	App. Def. Off.	SB222		
Larry Dodge	793-5703	Self	SB222	X	
Gary Dusseljee	793-5550	Self	SB222	X	
Honey Lanham	793-5701	self	SB222	X	
WYNONA GEARY	793-5536	SELF	SB222	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY